



Court File No. **7-87-19**

Action

FEDERAL COURT

BETWEEN:

DZAWADA'ENUXW FIRST NATION

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

Rule 171

Statement of Claim

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this

Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

January 10 2019

Issued by: _____ (Registry Officer)

Address of local office:

Federal Court of Canada
Vancouver Local Office
Pacific Centre
701 West Georgia Street
P.O. Box 10065
Vancouver, B.C.
V7Y 1B6

ORIGINAL SIGNED BY
MUN Y. CHAN
A SIGNÉ L'ORIGINAL

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TO:

Attorney General of Canada
Director, Vancouver Regional Office
Department of Justice
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____

day of 10 JAN 2019 A.D. 20 _____

Dated this 10 JAN 2019 day of _____ 20 _____

MUN Y. CHAN
REGISTRY OFFICER
AGENT DU GREFFE

Claim

Relief sought

1. The plaintiff claims the following relief:

a. In respect of eulachon:

- i. A declaration that the Dzawada'enuxw have an Aboriginal right to harvest eulachon for food, ceremonial and social purposes within the area depicted on the map in Appendix A (the "Rights Area");
- ii. A declaration that the Dzawada'enuxw have an Aboriginal right to exchange eulachon for other goods on a limited basis and to harvest eulachon for that purpose within the Rights Area;
- iii. A declaration that the Dzawada'enuxw have an Aboriginal right to manage the eulachon fisheries within the Rights Area;

b. In respect of Coho, Chum (aka "Dog"), Chinook (aka "Spring"), Pink and Sockeye salmon (collectively the "Salmon Species"):

- i. A declaration that the Dzawada'enuxw have an Aboriginal right to harvest the Salmon Species for food, ceremonial and social purposes within the Rights Area;
- ii. A declaration that the Dzawada'enuxw have an Aboriginal right to exchange the Salmon Species for money or goods on a limited basis and to harvest the Salmon Species for that purpose within the Rights Area;
- iii. A declaration that the Dzawada'enuxw have an Aboriginal right to manage the Salmon Species fisheries within the Rights Area;

c. A declaration that the Defendant has infringed the Dzawada'enuxw's Aboriginal rights in respect of eulachon by issuing each of the following Finfish aquaculture licenses (collectively the "Finfish Licences"):

- i. License No. AQFF 115202 2016/2022 – Burdwood Group, Raleigh Passage, issued to Cermaq Canada Ltd.;
- ii. License No. AQFF 115208 2016/2022 – Cecil Island, Greenway Sound, issued to Cermaq Canada Ltd.;

- iii. License No. AQFF 115201 2016/2022 – Cliff Bay Simoom Sound Wishart Peninsula, issued to Cermaq Canada Ltd.;
 - iv. License No. AQFF 115213 2016/2022 – Cypress Hrbr, Harbour PT, Suttlej Channel, issued to Cermaq Canada Ltd.;
 - v. License No. AQFF 115309 2016/2022 – Glacial Falls, Watson Cove, Tribune Channel, issued to Marine Harvest Canada Inc.;
 - vi. License No. AQFF 115209 2016/2022 – Maude Island, SE Broughton Is., issued to Cermaq Canada Ltd.;
 - vii. License No. AQFF 115233 2016/2022 – Midsummer Island, Spring Passage, issued to Marine Harvest Canada Inc.;
 - viii. License No. AQFF 115316 2016/2022 – Potts Bay, Midsummer Island, issued to Marine Harvest Canada Inc.;
 - ix. License No. AQFF 115214 2016/2022 – Sir Edmund Bay, NE Shore Boughton Inlet, issued to Cermaq Canada Ltd.; and
 - x. License No. AQFF 115327 2016/2022 – Wicklow Point, Broughton Island, issued to Marine Harvest Canada Inc.
- d. A declaration that the Defendant has infringed the Dzawada'enuxw's Aboriginal rights in respect of the Salmon Species by issuing each of the Finfish Licenses;
 - e. An order quashing the Finfish Licenses; and
 - f. Such further and other relief as this Honourable Court deems just.

The parties

- 2. The Dzawada'enuxw First Nation is an Aboriginal community. Before and at the time of first contact between the Dzawada'enuxw First Nation and Europeans, the Dzawada'enuxw First Nation existed as a distinct, organized and self-governing social and political entity. The Dzawada'enuxw First Nation has occupied and made use of its traditional territories since before first contact, through to the present.

3. The Defendant, the Attorney General of Canada ("Canada") is the person designated for proceedings against the federal Crown pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

The Dzawada'enuxw Aboriginal rights in respect of eulachon

4. Members of the modern-day Dzawada'enuxw First Nation are descended from the Dzawada'enuxw Aboriginal community that existed in what is now British Columbia at and before the time of first European contact, and the modern-day Dzawada'enuxw First Nation is a continuation of and a successor to the Dzawada'enuxw First Nation that existed at and before the time of first European contact. The modern-day Dzawada'enuxw First Nation together with the Dzawada'enuxw Aboriginal community that existed in what is now British Columbia at and before the time of first European contact, will be referred to in the following paragraphs of this Statement of Claim as "the Dzawada'enuxw", and shall have the meaning the context requires.
5. At all material times, including prior to and at European contact, the Dzawada'enuxw fished for, harvested, managed, processed, consumed, traded and sold the eulachon which run in the Rights Area. The Dzawada'enuxw fished for and harvested any eulachon available to them from time to time within the Rights Area, preserved and processed those eulachon (including preserving, packing, storing, and treating) into processed fish products ("Eulachon Fish Products") for trade or future consumption, consumed eulachon and Eulachon Fish Products as a staple of the Dzawada'enuxw diet, and traded eulachon and Eulachon Fish Products among the Dzawada'enuxw and other Aboriginal peoples to acquire other goods.
6. The fishing for, harvesting, managing, processing, consumption, trade and sale of eulachon and Eulachon Fish Products were defining features of the Dzawada'enuxw economy and constituted practices, customs or traditions integral to the distinctive Aboriginal culture of the Dzawada'enuxw at contact. All of these activities are

referred to in the following paragraphs of this Statement of Claim as “The Dzawada’enuxw Eulachon Fishery” or “Eulachon Fishery”, and these terms shall have the meaning the context requires.

7. The Dzawada’enuxw have various aboriginal rights in respect of the Eulachon Fishery, protected by s. 35 of the Constitution Act, 1982, including the rights to harvest eulachon for food, ceremonial and social purposes, to harvest and exchange eulachon and Eulachon Fish Products for other goods on a limited basis, and to manage the Eulachon Fishery within the Rights Area.
8. For greater certainty, for the purposes of this litigation only, the Dzawada’enuxw do not in this proceeding assert an Aboriginal right to exchange eulachon or Eulachon Fish Products for money.

The Dzawada’enuxw Aboriginal rights in respect of the Salmon Species

9. At all material times, including prior to and at European contact, the Dzawada’enuxw fished for, harvested, managed, processed, consumed, traded and sold the Salmon Species which run in the Rights Area. The Dzawada’enuxw fished for and harvested any salmon available to them from time to time within the Rights Area, preserved and processed those salmon (including preserving, packing, storing, and treating) into processed fish products (“Salmon Fish Products”) for trade or future consumption, consumed salmon and Salmon Fish Products as a staple of the Dzawada’enuxw diet, and traded and sold salmon and Salmon Fish Products among the Dzawada’enuxw and other Aboriginal peoples to acquire other goods and to accumulate wealth.
10. The fishing for, harvesting, managing, processing, consumption, trade and sale of salmon and Salmon Fish Products were defining features of the Dzawada’enuxw economy and constituted practices, customs or traditions integral to the distinctive Aboriginal culture of the Dzawada’enuxw at contact. All of these activities are referred to in the following paragraphs of this Statement of Claim as “The

Dzawada'enuxw Salmon Fishery" or "Salmon Fishery", and these terms shall have the meaning the context requires.

11. The Dzawada'enuxw have various aboriginal rights in respect of the Salmon Fishery, protected by s. 35 of the Constitution Act, 1982, including the rights to harvest the Salmon Species for food, ceremonial and social purposes, to harvest and exchange the Salmon Species and Salmon Fish Products for money other goods on a limited basis, and to manage the Salmon Fishery within the Rights Area.
12. The Dzawada'enuxw Eulachon Fishery and the Dzawada'enuxw Salmon Fishery continue to be of central significance to the distinctive aboriginal culture of the Dzawada'enuxw, although their ability to practice their customs, practices and traditions in relation to these Fisheries have been significantly restricted by laws, regulations and policies enacted by Canada.

Infringement

13. Certain actions of the Defendant have diminished, threatened, disrupted, damaged, interfered with and infringed, the Dzawada'enuxw aboriginal rights in respect of the Eulachon and Salmon Fisheries.
14. The specific acts of the Defendant which are the subject of this proceeding, and which infringe the Aboriginal rights are:
 - a. Issuance of each of the nine Fishfish Licenses.
15. The granting of the Finfish Licences infringes the Defendant's Aboriginal rights because the licenses allow the operation of finfish aquaculture facilities (aka "fish farms"), which imperil the wild eulachon and salmon populations on which the Plaintiff depends in order to exercise its Aboriginal rights in respect of the Eulachon

and Salmon Fisheries. The fish farms imperil these wild fish species because, *inter alia*:

- a. The salmon populations that run in the Rights Area are in a serious state of decline;
- b. The eulachon populations that run in the Rights Area have been inconsistent since the mid-1990s and have not yet recovered to historic levels;
- c. Fish farms expose wild salmon and eulachon populations that run near them to higher levels of harmful fish parasites, including sea lice;
- d. Viruses, including piscine orthoreovirus (PRV), are known to occur in farmed Atlantic salmon in BC salmon farms, and can be transferred from farmed salmon populations to wild salmon and eulachon populations that run near the fish farms. Furthermore, there is a credible body of scientific evidence indicating a direct link between PRV and heart and skeletal muscle inflammation (HSMI). Both PRV and HSMI are known to have deleterious effects on fish.
- e. The fish farms pollute and degrade the marine environment beneath and around the net pens, which may negatively impact wild eulachon or salmon populations that run near them as well as other species on which the wild eulachon or salmon populations depend for food, and may also contaminate the wild eulachon or salmon; and
- f. Underwater lights used by the fish farms can attract wild eulachon or salmon and thereby expose them to increased risk of harm and predation.

The plaintiff proposes that this action be tried at Vancouver, British Columbia.

January 10 2019




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Dzawada'enuxw Rights Area



Legend

 Dzawada'enuxw Rights Area

Mapped by: Dzawadaenuxw GIS 2019